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BRIEF ON MERITS

No. 1

IN THE

SUPREME COURT OF THE UNITED STATES

August Special Term, 1958

WILLIAM G. COOPER, *et al* ..... *Petitioners*

v.

JOHN AARON, *et al* ..... *Respondents*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE PETITIONERS

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OPINION BELOW

The opinion of the Court of Appeals is as yet unreported. It and the District Court opinion are abstracted in the appendix to Respondents' brief filed prior to the August 28 hearing.

JURISDICTION

The judgment of the Court of Appeals was entered August 18, 1958. On August 28, 1958, by order of this Court, the Petitioners were given leave to file petition for a Writ of Certiorari not later than September 8, 1958. The petition was filed September 8, 1958. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

The District Court found that the school board's plan of desegregation has resulted in severe impairment of the educational program and an overall intolerable situation because of overt resistence and opposition by the state government, students, parents, organized groups, and segments of the community. The questions presented are:

(1) Whether a court of equity may postpone the enforcement of the respondents' constitutional rights if the continued enforcement thereof will result in an intolerable situation and great disruption of the educational process to the detriment of the public interest, the schools, and the students including the respondents.

(2) Whether a school district has a duty and obligation, by invoking extraordinary legal processes and otherwise, to quell violence, disorder and organized resistance to desegregation.

CONSTITUTIONAL AMENDMENT INVOLVED.

Amendment 14 to the Constitution of the United States, Section 1, provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

Little Rock School District, hereinafter referred to as "the District", after the first *Brown* decision and before the second *Brown* decision, evolved a tentative Plan of Integration. The good faith of the District has never been challenged. The Plan contemplated integration in the senior high schools of the District during the 1957-1958 term, later in the junior high schools, and still later in the grade schools. It was assumed that the plan would require a period of about seven years.

The NAACP was not satisfied with the Plan or the time schedule and caused a suit to be filed contending that complete integration should be required overnight. The District Court and the Circuit Court of Appeals for the Eighth Circuit approved the seven year plan. See *Aaron* v. *Cooper*, 143 F. Supp. 855 (E.D. Ark.); 243 F. (2d) 361 (C.C.A. 8th).

The District commenced functioning under the Plan in September, 1957, and it operated during the 1957-1958 term with disastrous results. With an experience which taught the futility of immediate operation of the plan without sacrificing those values uppermost in the minds of educators, the District filed a Petition asking that the District Court, in the exercise of its discretion, postpone operation under the Plan for a period of two and one-half years. On undisputed testimony as to what had happened, the District Court concluded that the education of all pupils was being harmed and in the public interest an interruption in operations should be permitted.

Among the express findings of the District Court, as contained in its Memorandum Opinion, are the following:

"There were many incidents within the school consisting of slugging, pushing, tripping, catcalls, and abusive language.

"There was tension among the students and teachers which resulted in the lowering of the standards of education.

"Teachers were physically exhausted and frustrated.

"On forty-three occasions there were threats that the school building would be destroyed by dynamite. Each threat necessitated the searching of the premises.

"School property was destroyed by acts of vandalism and school funds were expended for replacements which necessitated reducing expenditures for necessary maintenance.

"200 pupils were suspended and two were expelled.

"Extra-curricular school activities were diminished.

"Troops moved around and within the school building distracting the pupils from their school work.

"There was 'chaos, bedlam and turmoil' from the beginning.

"Newspaper articles and circulars have been published and distributed condemning the principle of integration, abusing the school officials, and telling the residents of the district that integration could be avoided.

"School officials were threatened with violence.

"A serious financial burden has been cast on the District in coping with the problems encountered.

"The State of Arkansas, instead of bringing its laws into conformity with the rule of *Brown* v. *Board of Education*, has adopted a constitutional amendment and enacted several statutes which destroy in various ways the process of integration.

"Education has suffered and will continue to suffer.

"The Police Department of Little Rock is unable to furnish adequate protection.

"Federal troops will be required again next year.

"The situation is intolerable."

Although not mentioned by the District Judge, the record reveals other conditions which added to the intolerability of the situation:

Mobs formed and overtly interfered with operations under the Plan. Some were arrested by the City Police but later discharged.

Vicious circulars were distributed condemning the District Court, the Supreme Court of the United States and the school officials who recognized the supremacy of Federal Law.

Masters of rhetoric were imported who told the residents of the District that the Governor of Arkansas could legally prevent integration and suggested that the shedding of blood was permissible in order to maintain segregation.

Many of those who formed into mobs were identifiable, but none has been punished by the District Court or any Federal law enforcement agency.

Some of the Negro pupils who were abused made reports to the United States District Attorney. The Attorney General of the United States made a public statement to the effect that no one who had interfered with operations under the Plan would be prosecuted.

A columnist writing for one of the local papers constantly supports the doctrine that the Fourteenth Amendment was not legally adopted and that the decision of this Court in *Brown* v. *Board of Education* is not the law of the land.

Vulgar cards, critical of the school officials, were given by adults to school children for distribution within the school building.

Pupils who became involved in disciplinary investigations are being guided by adults.

The Federal Bureau of Investigation made a full and comprehensive report of the Little Rock situation, and although the school officials discussed with the F.B.I. several times the matter of using the report to arrive at a decision as to feasibility of the use of injunctive measure, the report was not made available to them, nor was the report utilized by the Department of Justice since it dropped plans to prosecute agitators.

The legislative, executive, and judicial departments of the state government opposed the desegregation of Little Rock schools by enacting laws, calling out troops, making statements villifying Federal law and Federal courts, and failing to aid enforcement through judicial processes.

On the basis of its findings, the District Court held that the request for a postponement was made in good faith and was manifestly justifiable; that severe

impairment of the educational program and of the welfare of the students and the community would result were the postponement not granted; that the inherent powers of equity and the spirit of the second *Brown* decision dictated that the school district be allowed to operate its schools on a segregated basis for a time without being considered in contempt of court.

The Circuit Court of Appeals for the Eighth Circuit agreed with the findings of the District Court that the evidence is appalling but that great additional expense, disruption of normal educational procedures, tension and nervous collapse of the school personnel, turmoil, bedlam, and chaos, are not a legal basis for suspension of the plan since this would be an accession to the demands of insurrectionists.

SUMMARY OF ARGUMENT

The argument of petitioners is reflected by the questions presented. First, where a school board has made a prompt start toward desegregation and has continued throughout to exercise good faith, severe impairment of the educational system both present and prospective because of desegregation entitles the school district to a postponement regardless of the source and motivation of the destructive forces. The second *Brown* decision was so construed by the District Court.

There are thousands of school districts in the South that have not made a step toward desegregation. In their repose these districts are conducting educational programs without harrassment of any sort albeit constitutional rights declared by the *Brown* decisions are being delayed. Thus it would be the height of irony if the Little Rock School District, having made the start in good faith, were denied this post-

ponement at the expense of the entire educational program at the high school level. The attorneys for the respondents have, at every stage, tacitly conceded the existence of the situation as found by the District Court, but have ignored and skirted the equities of the school district and of the thousands of students, parents and teachers. Moreover, it is the judgment of the District Court and the school board that the respondents' best interests would be served by enrolling them on a segregated basis, and no one is in a better position to determine this.

The Solicitor General, in his argument before this Court on August 28, 1958, stated that a court of equity does not ask people to do things that are beyond their power. He agreed that the school board has had a difficult time of it. He further stated that in his opinion the *Brown* decision does not extend to destruction of institutions in order to grant private rights. Apparently the position of the Government is that if the school board had done everything possible and still the merits of the case called for a stay, then the granting of it would be reasonable; but that the school board could have done more and that the situation is difficult but not impossible. This would seem to be a substitution of judgment for that of the school board and the District Court.

The Circuit Court of Appeals and this Court should not substitute its judgment for that of the District Court unless it is obviously without foundation in fact. Here the school board determined and the District Court found that maintenance of educational standards was impossible under the circumstances. There was ample evidence in support of this determination, and the District Court further found

that the school board and personnel had done all they could to prevent total disruption of the schools.

It is to be questioned whether a court has the practical power to deal with opposition such as is here encountered. But if it does, certainly the method should not be that of placing the school board in the undeserved position of being the sole bastion of Federal authority until it destroys itself. It may be that mass violent opposition can be dealt with through the District Court with the assistance of the Department of Justice and the respondents, but until unlawful force, violence and official state resistance subside through passage of time or as a result of the exercise of the powers of the judicial processes, the school district must be allowed its requested postponement.

Finally, the respondents and the Solicitor General have argued, and the Circuit Court of Appeals has suggested, that the school board was obligated to pursue the forces of violence arrayed in the community. This the school board cannot do, and this should not be expected of it. The school board is dedicated only to furtherance of the educational program and adherence to law and order. It is under compulsion of court order to desegregate, but it is not and should not be a militant combatant of segregationist forces. Rather, this should be an obligation of the respondents and the Department of Justice, neither of whom has acted.

ARGUMENT

I

The decision of the District Court is in the public interest and is in accord with the spirit of the second Brown *decision.*

The District Court found that continuation of desegregation in the immediate future would place the District in an intolerable situation. It found that the educational program was being, and would continue to be, greatly impaired and endangered to the detriment of the public. It further found that the District had done all it could toward alleviating the situation. Findings of fact by lower tribunals are not lightly disturbed. Especially should these findings of fact, based as they are upon overwhelming evidence, be unassailable in the light of the *Brown* decision. The determination of the reasonableness of the time and manner in which a school district implements the prescriptions of the *Brown* decision rests in the sound discretion of the local District Judge. Virgil Blossom, Superintendent of the District, gave his interpretation of "all deliberate speed" couching it in terms of the history of the Negro in this country and the present considerations of maintenance of educational standards and the public interest (R.295-299):

Q. Did the term used by the United States Supreme Court, "deliberate speed", gain your attention and did you try to determine what was meant by it?

A. Yes, sir, very materially, to this extent, Mr. Butler. The Negro as a race came to this country in 1619. They came in chains, as slaves. They stayed in that, and, as far as I could study

it, you would class that as the first period in the history of the United States, and they stayed from 1619 until 1865, which is nearly two and three-quarters centuries, and that is one period in their march for civil rights of their development. The second period began in 1865 and they stayed in this second period until 1896 when we had *Plessy* v. *Ferguson*. That is 31 years. Now, in this period they had their freedom. They did not have economic or political or any other type of position to any extent. Then coming out of that period into what I would call the third one, from 1896 until 1954, and I would just label that separate but equal. Now, they stayed in that 58 years, and when you look at the problems and the complexities in this thing and recognize that many places separate but equal is no way near a reality. Many places in the Southland they still do not approach separate but equal, but in Little Rock, Arkansas, they did. I am not arguing the separate but equal philosophy. I am trying to state what history tells us in terms of a two and a half year request for delay, and that is the third period, and when we account for the fact that there are three periods, one taking nearly three centuries, another 31 years and another 58 years, and recognizing that there is one group that says we are going to have it all now and another that says we are never going to have it, you put the horns of the dilemma in proper perspective with the School Board right in the middle, and it is a difficult thing; and then you come to May 17, 1954, and we look at it today, June 4th, 1958, and you compare that period of time as compared to either one of the previous three periods I have outlined, and you wonder how fast, in terms of history, anyone can expect a change in cultural patterns, and you have to ask yourself, well, this district which was actually separate but equal, and could so be defended prior to May 17, which

has nothing to do with this, except in terms of the two and a half year delay. In view of what we know has happened this year, it just magnifies and intensifies the problem, and in terms of that period of time that I have outlined it is a very small segment compared to either one of the previous three periods and, at the same time, when we look at the slowness with which local laws are being moved out of the way by courts, and state courts in this instance, if you please, the problem is certainly magnified, and I would not be smart enough to say that two and a half years, or three and a half, or two, is a long enough period of time.

But when you look at it in terms of the time required to change cultural patterns, the slowness with which local laws are moved out of the way, and recognize that the fact that the Court spelled out in its "all deliberate speed" philosophy, certain logical legal reasons for delay, one of which is "local laws". It tells me that the Court anticipated the fact but they made a mistake. They anticipated that local and state governments would voluntarily fall in line and move those laws out of the way, but to me the Supreme Court was in error in their judgment. Southern states have not done that. Instead of moving them out of the way, daily they are creating more, which adds to this dilemma, and until that has happened, it seems to me that history spells out exactly what the Supreme Court meant by "all deliberate speed", and it spells out to me a varied studied judicial approach that each place is different and it may be different this year than last year or it may even be next, but they recognize it, and public interest is another thing, and I am sure that they have no idea of down-grading anybody's educational program. Now all of that was considered very deliberately and judiciously in terms of asking for two and a half years, and when you look

> at the size of the problem involved and look at what history seems to tell us, then two and a half years looks like a very short time to me.

In the second *Brown* opinion (349 U.S. 294), with respect to the spheres in which school districts and the District Courts should operate, this was said:

> "Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles."

The mores of the people in the realm of law enforcement are powerful. In the Appendix we have quoted from "Folkways" by William Graham Sumner and articles by Ruppert Vance, Wiley H. Davis and W. E. Gauerke and Mozell Hill which appeared in the *Journal of Public Law*, Emory University Law School, Vol. 3, No. 1, Spring, 1954, Edition.

As a rule laws follow the crystallization of the mores. In that pattern law enforcement is easy, as public sentiment approves enforcement. When laws are in advance of the mores, then in order to have effective enforcement there must be (a) an ability to understand the purpose of the law, a well developed sense of self-discipline, and a willingness to cancel an existing attitude for societal benefits; or (b) the government which creates the new law which is not in step with the mores must, by an application of compulsive power, be able to force the people to accept its principle regardless of their attitudes. If both conditions for enforcement are lacking, the results are bound to be

turmoil, recalcitrance, and a rapidly developing disrespect for all law.

The mores are different in different places, the variation being due to the environments under which they develop. The *Brown* decision is more or less apace with the mores in some of the northern states. In the southern states it was far out in front, and its rule has provoked wide-spread and intense hostility to the members of the Negro race, the Supreme Court of the United States, the Federal Government, and all school officials who believe it is their duty to carry out its mandate. Judge Reeves who presided in *Hoxie School District* v. *Brewer*, 137 F. Supp. 364 (E.D. Ark.), was aware of the actuality of the problems springing from the mores. He said:

> "Judges should not be unmindful of the customs, mores and sentiments that may have existed among people and in communities over a long period of years and that a sudden overturning or reversal of such habits and customs by an apparent outside force or authority would at first blush be provocative. Under such circumstances logic, and not emotion, should dominate and prompt action. If the change is proper and just, then all should submit without delay. If it be deemed unjust and improper, then orderly processes should be observed to reestablish the custom."

It seems to us that the language in *Brown* shows an awareness of the probable development of difficulties and insistence that the remedy of enforcement was to be kept flexible so as not to place the District Courts in the position of ordering what they could not enforce. Reference is made to the "varied local school problems". When a school district grapples with one of the problems, the courts will have to determine whether

it is acting in good faith. In most instances good faith can be determined by answering the question as to whether the problem is real or imaginary. It is said that "once a start has been made" additional time may be requested to carry out the ruling in an "effective" manner. Here a start was made. Due to conditions beyond the control of the District, its efforts effectively to integrate have been thwarted. What is the meaning of the word "effective" as used in the opinion? Is effectiveness to be tested only by the speed with which Negro pupils are enrolled in integrated schools or does the word connote a transition which will give to the Negro pupils their constitutional rights with as much speed as is reasonably compatible with the preservation of the existing standards of public education.

In the case of *Cumming* v. *Board of Education*, 175 U.S. 528, 544-545, Justice Harlan denied an injunction because "the result would only be to take from white children educational privileges enjoyed by them, without giving colored children additional opportunities for the education furnished in high schools." In the Little Rock situation, the negro students' high school education will not be interrupted and in fact they will be spared the predictable mental torment and physical danger that would accompany attendance at Central High School at the present time. On the other hand, Judge Lemley's decision is not reinstated, the school board for the reasons reflected in the findings of the district court will be unable to operate Central High School on an integrated basis under conditions as they now exist in Little Rock. Perhaps the matter of greatest importance will be the irreparable harm done to the education of 2,000 stu-

dents at Central High School and more than 21,000 students throughout the Little Rock School District.

It is said that the courts may consider problems relating to "administration . . . arising from the . . . revision of local laws . . . which may be necessary in solving the foregoing problems." The revision there contemplated was one which would conform local laws to the rule of *Brown*. Here the revision has gone in reverse of what was intended. Amendment 44 to the Constitution of Arkansas was adopted in 1957. It commands the General Assembly to oppose by every constitutional method the "unconstitutional decision of *Brown* v. *Board of Education*." As ludicrous as its language may appear to this Court from a legal standpoint, it illustrates the spirit in which the suggestion to revise has been accepted. The following statutes have been enacted or adopted by the people to impede the process of integration:

> The Pupil Assignment Law, Sections 80-1519 to 80-1524, Arkansas Statutes (1947).
>
> No compulsory attendance, non-segregated schools, Section 80-1535, ib.
>
> Employment of legal counsel to resist integration, Section 80-539, ib.
>
> Sovereignty Commission, Section 6-801, ib.

At its special session commencing August 26, 1958, the Arkansas legislature passed a raft of bills which allow the governor to close schools integrated by court order where there is some opposition; allow transfer of students from integrated schools to segregated schools as a matter of right; allow attendance at segregated classes if desired and as a matter of right; permit retaliation against school boards by means of

recall; and so forth. The governor has not yet signed the bills.

The heart beat of the educational system is found in the area of administration and the opponents of integration, realizing this, aim at the disruption of the administrative department. Administration is concerned with teacher qualifications, finances, protection of school property, discipline, pupil responsiveness, scholastic opportunities, etc., etc. If a timely revision of local laws was by this Court considered an important factor, surely the twisted revision which has occurred in Arkansas was a factor to be considered by the District Court in determining whether the plan first adopted was workable and, if not, whether a reasonable modification was appropriate.

Unable to predict what problems would arise, this Court said the rule of equity should be applied in integration suits. From the opinion:

> "In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and *by a facility for adjusting and reconciling public and private needs.* These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools *as soon as practicable* on a nondiscriminatory basis. To effectuate this interest *may call for elimination of a variety of* obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the *public interest* in the elimination of such obstacles in a systematic and effective manner (emphasis supplied).

Having said that the principles of equity are to control and that "practicable flexibility" in the adjusting and reconciling of public and private needs is one of the traditional functions of equity, we assume this Court meant that those tests should be applied not only at the start of integration but throughout its entire course and until the supervisory jurisdiction of the particular court is ended with a completely integrated school system. To argue that because a start is made the District is frozen to the original schedule which, due to the development of unanticipated conditions, is found to be no longer practical is to do violence to any reasonable concept of flexibility.

The phrase "with all deliberate speed" repels any idea of precipitancy in total disregard of the consequences. The following is taken from "Desegregation and the Law", a book written by Albert P. Blaustein and Clarence Clyde Ferguson, Jr. (1957), members of the faculty of Rutgers University Law School:

> "No words in the school segregation cases have created more confusion or caused more comment than the simple phrase, 'with all deliberate speed'. Yet, vague as these words may appear, they were not tossed carelessly into the 1955 opinion just to improve literary style or sentence structure. On the contrary, as Justice Minton told the press shortly before his retirement, these words were the result of 'long and careful consideration'. Embodied in the phrase 'with all deliberate speed' is a definite rule of law. But it is a peculiar rule of law in that it is designed to permit so much flexibility in its application. It is a rule which causes decisions to vary from court to court and from case to case. And it was for precisely this reason that it was employed in

Brown v. *Board of Education.* 'With all deliberate speed' *was utilized as a term of art, empowering the lower courts to adjust the impact of the decision in light of local governmental conditions*" (pp. 218-219) (emphasis supplied).

Here the District Court was acting within the area of permissive discretion when the impact of the *Brown* decision was adjusted in the light of local governmental conditions.

II

EFFECT OF OPPOSITION BY COMMUNITY AND BY STATE GOVERNMENT

It is the position of the District that where the educational program is imperiled and greatly impaired because of the current operation of a plan of desegregation, then in the public interest it is entitled to suspend for a time the operation of schools on an integrated basis. The nexus of the District's case is the practical impossibility of continued operation on a desegregated basis. The motives and actions of third parties are not material to the question of whether or not the Little Rock school system should be effectively destroyed by court order.

To illustrate, let us suppose that a drayman is ordered by a court to proceed from town A to town B. In transit he must pass over a bridge spanning a chasm. The bridge is destroyed before he can traverse it. The bizarre position of the Circuit Court of Appeals and the Respondents is that if the bridge is destroyed by accident or somesuch probably the drayman should be allowed to halt his journey until reconstruction of the bridge; but if the bridge is maliciously destroyed by a third party in order to frustrate the orders of the Court, then the drayman

must be forced to plod on his journey and over the brink of the chasm to his fate.

The Solicitor General has made substantially the same argument as that of the Respondents, leavened, however, by the concession that institutions may not be destroyed in order to enforce private rights. In fact the District comes within the scope of the latter premise, and the District Court so found. The remainder of the brief of the Solicitor General is directed to responsibility for enforcement and to an effort to go behind the findings of the District Court and argue the facts. To traverse these questions of fact would unnecessarily lengthen the brief but two misstatements should be corrected. On page 15 of the Solicitor General's brief it is stated that the active instigators are limited in number. To the contrary, they are legion; they represent the great mass of the people and the state government as well. And on page 17 it is stated that only twenty-five students were interfering with the plan. In fact more than two hundred students were suspended and many more were not apprehended.

The equities of the public, the students, and the District have been hastily dismissed by the Circuit Court of Appeals and the Respondents. But this is the foremost consideration for to do otherwise in this situation would be to establish a policy of consigning the handful of southern school districts conforming to law and order to the role of martyrdom on the public altar.

The several cases discarding public opposition as a ground for postponement have no relevance to this situation for only a threat existed, not devastating

results. It is the results and consequences that entitle the District to relief.

The District Court, in its opinion, said:

> "The opposition to integration in Little Rock is more than a mental attitude."

In that terse finding the rule of *Jackson* v. *Rawdon*, 235 F. 2d 93 (C.C.A. 5th), and its followers is set apart and catalogued as one which has application only in the preliminary stages of a judicially enforced integration. Nathaniel Jackson and others filed suit against a Texas school district in 1955. At the hearing the school officials offered only alibis which showed conclusively that there were no administrative problems confronting them. The following excerpts are taken from the opinion:

> "* * * plaintiffs' claims by developing that there were no administrative difficulties which had to be overcome in order to admit the plaintiffs to the Mansfield High School but only, as clearly shown by the testimony of R. L. Huffman, the superintendent, a difficulty arising out of the local climate of opinion, requiring the board, in its opinion, to discriminate against plaintiffs by denying them access to the only high school in Mansfield, while permitting white children to attend it. * * *
>
> "We think it clear that, upon the plainest principles governing cases of this kind, the decision appealed from was wrong in refusing to declare the constitutional rights of plaintiffs to have the school board, acting promptly, and completely uninfluenced by private and public opinion as to the desirability of desegregation in the community, proceed with deliberate speed consistent with administration to abolish segregation in Mansfield's only high school and

with no concern whatever as to whether their course will end in frustration and a further wasting away of respect for national law. The District Court could see far beyond the horizon of the negro students. There are visible rights other than those of immediacy in integration. The public interest is involved, and it was thought best to adjust and balance rather than apply the over simplified syllogism that this Court having said the Negro pupils are entitled to some rights, it therefore follows that any retardation in granting those rights, regardless of the reason, is unreasonable.

There is no questioning of constitutional rights in a short delay. Those rights are recognized. In a temporary postponement of the time for the exercise of those rights, based on sound reason, there is no intimation of a lowering of status. A reasonable postponement is in the nature of an adjustment wisely required for the better protection of the very rights which are asserted. That is the rationale of the District Court's decision. As a rule, education is far removed from the controversial areas of government. No one would think of a school district as being equipped to enforce a law which is objectionable to those who supply the funds with which the District is operated, and yet that seems to be one of the basic ideas of appellant. The petitioners quite candidly told the District Court they did not look upon such enforcement as being a duty and they felt it would be improper for the District, which is tax supported and whose revenues are limited, to expend its funds in perpetual litigation and prosecutions. Surely there is no federal law which could possibly impose upon a local school district any kind of a mandate which would force it to use its revenues, not for educational

purposes, but for compeling obedience on the part of others to federal laws.

Mobs formed preventing entry of the Negro pupils and screaming insults upon the Police Department, school officials and the Federal Court. Arrests were made by the police, but the offenders were discharged by the judge who presided over the Municipal Court. There was not a single prosecution by the Federal Government. There was not a single citation for contempt, although many of the participants were identifiable. A spokesman for the Department of Justice, in an effort to impress upon the Governor of Arkansas the importance of maintaining law and order through State action, explained the difficulties of Federal enforcement. Thereupon the Governor revealed through the press the existing weakness in Federal enforcement and this, as intended, gave impetus to the deliberate flouting of the federal law. The FBI made an investigation and it is to be assumed that it identified the ring leaders. The local papers contained pictures of Negro pupils going into the office of the United States District Attorney to make complaints. Nothing happened. Then came a front page announcement in jumbo type that the Attorney General of the United States would not prosecute any of those who had taken part in the unlawful demonstrations.

We are not in the least critical of the Department of Justice. As a matter of fact, we believe its staff has shown a high degree of competence and zeal in the Hoxie case and in the action to restrain the use of Arkansas National Guard in preventing Negro pupils from entering Central High School. The brutal fact is that the Department of Justice has only few and inadequate legal implements it can use in punishing

those who directly or indirectly defy the Federal Court order of integration. This fact having become obvious, the agitators are emboldened and they go to further extremities in placing their individual ideas of law above any disagreeable judicial decision.

The problem of enforcement is forcefully pointed out in the book, "Desegregation and the Law", by Albert P. Blaustein and Clarence Clyde Ferguson, Jr. (1957), members of the faculty of Rutgers University Law School. It is there pointed out that severe doubts exist as to the constitutionality of Sections 241 and 242 of Title 18, United States Code. *United States* v. *Williams*, 341 U.S. 70; *Screws* v. *United States*, 325 U.S. 91. And it is further pointed out that the contempt power is limited by the requirement of certainty when dealing with broad desegregation orders and by its inherent inadequacy in coping with community disrespect for federal law.

In an article entitled "Negro Citizens in the Supreme Court of the United States", 52 Harvard Law Review (1939), at page 832, this is found:

> "It is impossible in reviewing these decisions to avoid the conclusion that the Supreme Court, until recently at least, has been no great friend to the black man. There are those who believe that it could have done no more with a nonrational problem packed with sectional dynamite. Legislation running counter to emotions rising to a religious pitch is likely to require bayonets rather than equity decrees to enforce it. The Court is not well equipped to deal with a conspiracy by a whole state; and, when Congress has for so long been reluctant to interfere, it is not surprising that the Court should refrain from interfering with state policy."

The author cites *Giles* v. *Harris*, 189 U.S. 475. In the opinion Mr. Justice Holmes had this to say:

> "The other difficulty is of a different sort, and strikingly reinforces the argument that equity cannot undertake now, any more than it has in the past, to enforce political rights, and also the suggestion the state constitutions were not left unmentioned in Sec. 1979 by accident. In determining whether a court of equity can take jurisdiction, one of the first questions is what it can do to enforce any order that it may make. This is alleged to be the conspiracy of a State, although the State is not and could not be made a party to the bill. *Hans* v. *Louisiana*, 134 U.S. 1. The Circuit Court has no constitutional power to control its action by any direct means. And if we leave the State out of consideration, the court has as little practical power to deal with the people of the State in a body. The bill imports that the great mass of the white population intends to keep the black from voting. To meet such an intent something more than ordering the plaintiff's name to be inscribed upon the lists of 1902 will be needed. If the conspiracy and the intent exist, a name on a piece of paper will not defeat them. Unless we are prepared to supervise the voting in that State by officers of the court, it seems to us that all that the plaintiff could get from equity would be an empty form. *Apart from damages to the individual, relief from a great political wrong, if done, as alleged, by the people of a State and the State itself, must be given by them or by the legislative and political department of the government of the United States* (emphasis supplied).

Counsel for appellants asked witnesses for the District why they did not institute proceedings against those who interfered with the operations of Central

High School as was done in *Kasper* v. *Brittain* 38, 245 F. 2d 92 (C.C.A. 6th), and *Brewer* v. *Hoxie School District*, 238 F. 2d 91 (C.C.A. 8th). The reasons are obvious. In the *Kasper* case, only Kasper himself was involved. He fomented the strife. The school officials asked for a restraining order. It was entered and ignored. Kasper was then adjudged to be in contempt and brought before the court with an order of attachment. From that point on it was the presiding judge and not the school officials who placed Kasper in the federal penitentiary.

In the *Hoxie* case (137 F. Supp. 364), there were only four defendants, to-wit, Brewer, Guthridge, Johnson and Copeland. The results of the agitation they had created involved the personal safety of the school officials and many others. The officials, aided by the Attorney General of the United States, sought an order of injunction. The latter had come in as *amicus curiae*. He filed an exhaustive brief in the Court of Appeals, and we are sure he was mainly responsible for the results of the litigation.

It seems inconsistent to us that counsel employed by NAACP contend that a school district sustained by tax funds should assume the burden of prosecuting those who interfere with the District's efforts to comply with the terms of the Plan. NAACP is an organization created for the very purpose of establishing and then enforcing constitutional rights of Negro pupils. It has a most capable legal staff and adequate funds. The idea of transferring to the School Board the burden of prosecuting violators of the Court order is as strange as the idea of requiring a defendant who has been cast in damages to issue the process that will consume his assets in order that the plaintiff's judgment may be satisfied.

It is true that in *Thomason* v. *Cooper*, 254 F. 2d 808 (E.D. Ark), the District applied to the District Court for an injunction against the use of a State court order which would have compelled it to violate the District Court's order. That, however, was no indication of a willingness to assume the role of public prosecutor. As stated by Judge Sanborn, the District was between the "upper and the nether millstone".

The District officials respect their oaths to support the Constitution of the United States and they have done so to the best of their ability. Now they have concluded that a sincere effort on their part is not enough. They have practiced no strategy of evasion. They have made no move without asking approval of the Federal Court. Their attitude from the start has been one in which law and order along with their primary function of maintaining a public school system have priority.

In *Faubus* v. *United States*, 254 F. 2d 797 (C.C.A. 8th), the Federal Government had the power to act, and it exercised such power with swiftness in putting a stop to an unlawful defiance of a Federal Court order. A school district, however, which functions only in the field of education, is not as formidable an adversary as the United States of America.

Respondents quote from the *Faubus* case as follows:

> "* * * A rule which would permit an official whose duty it was to enforce the law, to disregard the very law which it was his duty to enforce, in order to pacify a mob or suppress an insurrection, would deprive all citizens of any security in the enjoyment of their lives, liberty, or property (p.33).

to put into effect desegregation there" (pp. 94-96).

The District was never dominated by private or public opinion. It received criticism from both avid integrationists and segregationists from the beginning, but it steadily went forward. There has been only one pause, and that was justifiable in the thinking of any rational human. When the Governor of Arkansas unexpectedly surrounded Central High School with troops in order to prevent the entry of Negro pupils, the situation was bristling with danger and solely to prevent injury to the Negro pupils the District caused a notice to the published in a local paper requesting them not to attend on the opening day. That decision was made late in the night. The next day the District, by petition, reported its action to District Judge Davies, in Arkansas on temporary assignment, and asked whether the notice should be rescinded. The District Court ordered that it be rescinded, and it was rescinded. A little later, when mobs were milling about the school premises, tension had almost reached the breaking point and a race riot was in the making, the District asked for a "temporary" postponement until calmness could be restored, pointing out in its petition that it was impossible to teach in an environment of such turmoil. Judge Davies labeled the petition and the proof as being "anemic", and that utterance did much to increase the difficulties of the District. The District continued its efforts to operate an integrated school, and at last it concluded that conditions were such that it should again ask the Court to decide whether operations under the Plan should be continued, and it then filed the petition which is here under consideration. This District has never declined to go forward. It has submitted its proof to a Federal Court, and

that Court, in the exercise of its discretion, has said that under existing conditions the District should not be required to proceed.

In *School Board of City of Charlottesville, Va.* v *Allen*, 240 F. 2d 59 (C.C.A. 4th), the trial court found:

> "They have given no evidence of any willingness to comply with the ruling of the Supreme Court at any time" (p.61).

This is taken from the opinion of the appellate court:

> "It had been two years since the first decision of the Supreme Court in *Brown* v. *Board of Education* and, despite repeated demands upon them, the boards of education *had taken no steps towards removing the requirement of segregation in the schools which the Supreme Court had held violative of the constitutional rights of the plaintiffs.* This was not 'deliberate speed' in complying with the law as laid down by the Supreme Court but was clear manisfestation of an attitude of intransigence, which justified the issuance of the injunctions to dispel the misapprehension of school authorities as to their obligations under the law and to bring about their prompt compliance with constitutional requirements as interpreted by the Supreme Court" (p.64) (emphasis supplied).

In *Orleans Parish School Board* v. *Bush* 242 F. 2d 156 (C.C.A. 5th), the situation was the same. The School District had made no start and it was ordered to do so. From the opinion:

> "It is evident from the tone and content of the trial court's order and the willing acquiescence in the delay by the aggrieved pupils that a good faith acceptance by the school board of

> the underlying principle of equality of education for all children with no classification by race might well warrant the allowance by the trial court of time for such reasonable steps in the process of desegregation as appears to be helpful in avoiding unseemly confusion and turmoil. Nevertheless whether there is such acceptance by the Board or not, the duty of the court is plain. The vindication of rights guaranteed by the Constitution can not be conditioned upon the absence of practical difficulties" (p.166).

That language was used in 1957, two years after the second *Brown* decision, with respect to a district that had not even formulated a plan of integration. The last sentence in the quotation is the thesis of respondents. As an abstract declaration of law, it cannot be challenged. As a working rule to be applied in all situations in the absence of power on the part of the Federal Government to vindicate federal rights and in the presence of forces which, if injected, will destroy public education for both white and Negro pupils, it can only be classed as obiter.

As stated in *Brown*—

> "Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner."

If the public interest is important and if it is demonstrated that a too rapid enforcement of private rights is harmful to the public interest, the ultimate decision must come out of a balancing of the equities between the two. In such situations there is little helpfulness in a legal abstraction.

In *Allen* v. *County School Board of Prince Edward County, Va.*, 249 F. 2d 462, (C.C.A. 4th), the school district was still stalling as late as November, 1957. The District Judge had declined to order it to proceed and gave the following reasons:

(a) Opposition to the order;

(b) racial tension in the community; and

(c) the possible closing of schools under a Virginia statute.

Apparently no testimony was offered. Like the school officials in *Jackson*, the District Judge did not think the community was ready. Evidently the only racial tension in existence was of the pro and con type which develops in all southern localities when integration is discussed.

In short, the Virginia situation was identical to that of Jackson. There had been no start and the only reason for the delay was that the populace did not like the idea. The Court said:

> "* * * Furthermore, it would not be necessary for the requirement as to segregation to be removed at once with respect to all grades in the schools, if a reasonable start were made to that end with 'deliberate speed' considering the problems of proper administration. See order in the Arlington case, approved by this court, 240 F. 2d at page 61, also *Aaron* v. *Cooper*, (8 Cir.) 243 F. 2d 361.
>
> "The fact that the schools might be closed if the order were enforced is no reason for not enforcing it. A person may not be denied enforcement of rights to which he is entitled under the Constitution of the United States because of action taken or threatened in defiance of such rights" (p.465).

In the foregoing cases only a "mental attitude" was involved. There were no overt acts of interference which crippled operations. The law draws a distinction in many fields between a mental attitude and an act. The first may be licit while the second may be illicit. Here the District is not confronted with what people of the community think about integration. It is confronted with such realities as: Destroying school property; planting disobedience in the minds of the pupils; making the lives of the school officials and teachers miserable; plunging the District into expenses it cannot afford; spreading panic by bomb threats; depriving pupils, Negro and white, of an opportunity to obtain a normal education, etc., etc.

In the cases discussed above, the courts could never have envisioned the turmoil, chaos and confusion which agitators have thrust into the schools operated by the District, and no court intends its opinion to be stretched in meaning so as to furnish a guide for factual situations unknown and unknowable at the time it was rendered.

If there were nothing in this record other than proof of a mental attitude, the position of the District would be untenable under the decisions above mentioned. If, on the other hand, there are illegal and overt acts of interference which cannot be halted by the District or some law enforcing agency, then the schedule first adopted should be modified.

Respondents say a constitutional right cannot be denied even to "promote the public peace by preventing race conflicts." From that it does not necessarily follow that a constitutional right, the enjoyment of which is conditioned by the decision creating it, cannot reasonably be postponed in order to protect the

public interest. It is stated in *Brown* that in the elimination of obstacles in the transition from segregated to integrated schools the courts shall "take into account the public interest." The public interest referred to is that mass of rights belonging to whites and Negroes which are rooted in public education.

Of course, no constitutional right should be impaired on the basis of what some partisan says may happen in the future. That, however, is not the situation before this Court. Here we are dealing with a constitutional right and the existence of conditions which enter into a decision as to whether it is enforceable in the manner and according to the original time schedule.

III

RESPONSIBILITY FOR ENFORCEMENT

The argument that the District should be denied relief because it did not affirmatively enforce the public peace and quell insurrection is probably as unrealistic as that involving the drayman and the bridge.

This is no mere instance of a handful of disgruntled extremists in the community. The matter is rather one of massive resistance to and defiance of a constitutional principle running counter to the mores of the people. Under the leadership of popular office holders the people of the state are launched on a steady course of absolute nonrecognition of the validity of the *Brown* decisions, usually on the premise that they are unconstitutional. The people have been told repeatedly by high officials, nationally syndicated columnists and others that the *Brown* decisions are not "the law of the land".

The District's attempted desegregation met with total opposition by the state government. As Mr. Blossom stated (R.273):

> "My opinion as to that, sir, would be that we have had total opposition from the State in that the executive branch of state government placed the troops around the school; the legislative branch of the government passed the segregation acts, the judicial branch of the government has not aided in any enforcement. Now that may be a lay interpretation, but in our system of government that embraces all three branches of it, and instead of aid we have opposition."

And the Court may take judicial notice that two weeks ago the Arkansas legislature voted almost unanimously for the drastic anti-integration legislation proposed by the governor and the attorney general.

At no time have the people of Little Rock or the school board expressed a feeling that integration of schools is desirable. The converse is true. But initially most people felt a responsibility as citizens to comply with orders of federal courts if that day came. When the District announced its plan of limited integration over a period of time most appeared satisfied that this was the best solution to a difficult problem.

Because of the statements made by our state's leadership, because of the failure of the Department of Justice to prosecute members of mobs and others hampering the federal courts, because several school districts retracted desegregation plans with impunity, because school districts refusing to formulate desegregation plans are still unintegrated despite months

and years of litigation, the people of Little Rock have changed their opinion. Now, in view of the above, the people believe that the District's plan was wholly unnecessary in light of the other means of resistence, legal and otherwise.

The District has exercised good faith with the courts and will continue to do so but its task is not one of preserving the peace. It did not pursue a plan of desegregation through choice, and it should not now be placed in the position of being duty bound to quell defiance. It is not the function of a school district to act as a buffer in a contest between state and federal authority, and certainly not to act as the bulwark of federal authority in such a contest.

This Court, in giving a new interpretation to the Fourteenth Amendment, has pronounced a rule of law which is well in advance of the mores of the people of this region and violent opposition to its principle has erupted.

The purpose behind the filing of the Petition is to ascertain whether a non-combatant school district must submit to interference such as is revealed here in the absence of any effective protection from the Federal Government. If no protection is to be expected in two and one-half years, it will be wise to suspend operations for that period. If, in the nature of things, there will never be any protection, operations should be suspended until such time as the people, by the processes of time, are taught to respect Federal Court decisions and to be willing, on patriotic grounds, to subdue the passions which now control their thinking.

Instead of facing the problem, the Respondents would gulp the rights which are said to be theirs

The decision undoubtedly marks the opening of a "new era" in race relations in the South. The period of quiet watching and waiting is over. School officials need no longer operate in "a twilight zone" of uncertainty, now that the Court has spoken. Any new era must take cognizance of the Negro population as a "caste" apart and the provisions now existent for separate educational systems. These two factors have created problems of administration of the public schools which are unique in the land, if not the world.

A last obstacle worth considering is the readiness of some to accept or to tolerate evasion of the Court's decision. This fact raises a most serious question. It appears that the well-housed and the respected will continue to spearhead the movement of malevolence. It is they who speak in voices strident and raucous. What they say, consequently, has a special unpalatability because they are among the "respected" members of society. In some quarters, the appealers to "mob spirit" have the support of important blocs. Under the guise of the "Men of This" or the "Women of That", the superpatriots will arrogate to themselves the responsibility for "preserving the Constitution" and "our sacred American way of life". That it is difficult to explain their failure to reject spurious reasoning, to repudiate policies clearly designed to hurt their fellow man, does not trouble the advocates of law evasion. Most frightening of the prospects is that inadvertently new life may be injected into the discredited Ku Klux Klan. Costly and lengthly litigation may be supplanted by the weapons of intimidation and violence. As one writer had observed, it appears that the only thing which could "revive this floundering aggregation of bed-sheeted heroes would be a Supreme Court order abolishing segregation in the public schools."

AUTHOR W. E. GAUERKE

Open defiance, or "popular nullification", of the decision is generally conceded to be the least likely alternative to the decision chosen by the Southern states. There will be, however, counter measures of delay and more delay, of attempts to expand the "separate but equal" concept, of establishment of "free private" schools, of rezoning in city areas. *For only the zealots see in court decisions the opportunity to integrate the dual school system within the immediate future.* Even though the Southern states will have to abide by the Court's decision and acclimate themselves to the law, they will do it neither willingly, completely, nor at once (emphasis supplied).

To resolve the dilemma of legislative and constitutional mandates, federal and state, which are in conflict with each other and, seemingly, with democratic and religious assumptions about freedoms and autonomy, is the formidable job before at least seventeen of the state governments. The problem for each will be how to best live with inevitable change.

AUTHOR MOZELL HILL

It is unfortunate that in a few deep South states the political climate in the immediate future will not be conductive to sane thinking and calmness. In a few of these states, political figures have already gone a long way toward amending the legal and political structures of the states so that communities will find it virtually impossible to comply with the Court's decision. There is little doubt that these political figures will be "successful" in their efforts and by these tactics they will hamper and even delay the desegregation process in a number of Southern communities for many years.

To enforce the law of the land is obviously a duty of a law enforcing agency, but one of the vital questions here is whether any such duty rests on a school district. If it be said that the duty rests on the school district, then we ask how can it possibly enforce the federal law and where is it to obtain funds to be used for the purpose?

IV

THE DISTRICT IS ENTITLED TO RELIEF

The District has requested and received from the District Court a stay of desegregation for two and one-half years. Its request was granted for compelling reasons of public interest and preservation of the educational system. The Circuit Court of Appeals reversed although admitting the predicament of the District.

The District Court found that the situation was intolerable but this term cannot begin to describe the loss to the community and the nation that results from impairment and even breakdown in the educational process. This Court should not revisit chaos and bedlam upon the District, but rather should uphold District Judge Lemley in his determination of the local situation..

Where a school board has made a prompt start toward desegregation and has continued throughout to exercise good faith, severe impairment of the educational system both present and prospective because of desegregation entitles the school district to a postponement regardless of the source and motivation of the destructive forces. The second *Brown* decision was so construed by the District Court.

If the *Brown* rule is not sufficiently flexible to allow time for the subsidence of forces such as are arrayed here against it, then it may be seriously doubted whether courts are able to effectively cope with "state action" such as this, and perhaps this Court should so hold. Certainly the legislative and political departments of the United States government have displayed little willingness to assist in the implementation of the *Brown* decisions, although the matter would seem to rest more appropriately in those departments where obstruction by the governor and legislature and mass opposition by the people of a state is concerned.

We are not saying that all of the havoc created by the militant conflicting forces arrayed against each other as a result of the *Brown* decisions can be dispelled within the next two and one-half years, but we are saying that a reasonable period of calm is the only hope of producing solutions to the distressing problems which this School Board and the people of this community must solve. This School Board pleads for that opportunity. The ruling of the District Court can and should be upheld within the framework of the pronouncements of this Court in the *Brown* decisions.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

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APPENDIX

FOLKWAYS by WILLIAM GRAHAM SUMNER

In our southern states, before the civil war, whites and blacks had formed habits of action and feeling toward each other. They lived in peace and concord, and each one grew up in the ways which were traditional and customary. The civil war abolished legal rights and left the two races to learn how to live together under other relations than before. The white have never been converted from the old mores. Those who still survive look back with regret and affection to the old social usages and customary sentiments and feelings. The two races have not yet made new mores. Vain attempts have been made to control the new order by legislation. The only result is the proof that legislation cannot make mores. We see also that mores do not form under social convulsion and discord. It is only just now that the new society seems to be taking shape. There is a trend in the mores now as they begin to form under the new state of things. It is not at all what the humanitarians hoped and expected. The two races are separating more than ever before. The strongest point in the new code seems to be that any white man is boycotted and despised if he "associates with negroes". Some are anxious to interfere and try to control. They take their stand on ethical views of what is going on. It is evidently impossible for any one to interfere. We are like spectators at a great natural convulsion. The results will be such as the facts and forces call for. We cannot foresee them. They do not depend on ethical views any more than the volcanic eruption on Martinique contained an ethical element. All the faiths, hopes, energies, and sacrifices of both

whites and black are components in the new construction of folkways by which the two races will learn how to live together. As we go along with the constructive process it is very plain that what once was, or what any one thinks ought to be, but slightly affects what, at the moment, is. The mores which once were are a memory. Those which any one thinks ought to be are a dream. The only thing with which we can deal are those which are.

The abolition of slavery in the northern states had been brought about by changes in conditions and interests. Emancipation in the South was produced by outside force against the mores of the whites there. The consequence has been forty years of economic, social, and political discord. In this case free institutions and mores in which free individual initiative is a leading element allow efforts towards social readjustment out of which a solution of the difficulties will come. New mores will be developed which will cover the situation with customs, habits, mutual concessions, and cooperation of interests, and these will produce a social philosophy consistent with the facts. The process is long, painful, and discouraging, but it contains its own guarantees.

We often meet with references to Abraham Lincoln and Alexander II as political heroes who set free millions of slaves or serfs "by a stroke of the pen". Such references are only flights of rhetoric. They entirely miss the apprehension of what it is to set men free, or to tear out of a society mores of long growth and wide reach. Circumstances may be such that a change which is imperative can be accomplished in no other way, but then the period of disorder and confusion is unavoidable. The stoke of the pen never does anything but order that this period shall begin.

All these cases go to show that changes which run with the mores are easily brought about, but that changes which are opposed to the mores require long and patient effort, if they are possible at all.

If we admit that it is possible and right for some to undertake to mold the mores of others, of set purpose, we see that the limits within which any such effort can succeed are very narrow, and the methods by which it can operate are strictly defined. The favorite methods of our time are legislation and preaching. These methods fail because they do not affect ritual, and because they always aim at great results in a short time. Above all, we can judge of the amount of serious attention which is due to plans for "reorganizing society", to get rid of alleged errors and inconveniences in it. We might as well plan to reorganize our globe by redistributing the elements in it.

Strictly speaking, there is no administration of the mores, or it is left to voluntary organs acting by moral suasion. The state administration fails if it tries to deal with the mores, because it goes out of its province.

Great crises come when great new forces are at work changing fundamental conditions, while powerful institutions and traditions still hold old systems intact. The fifteenth century was such a period. It is in such crises that great men find their opportunity. The man and the age react on each other. The measures of policy which are adopted and upon which energy is expended become components in the evolution. The evolution, although it has the character of a nature process, always must issue by and through men whose passions, follies, and wills are a part of

it but are also always dominated by it. The interaction defies our analysis, but it does not discourage our reason and conscience from their play on the situation, if we are content to know that their function must be humble.

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AUTHOR RUPERT VANCE

What of those important officers of administration, the members of local school boards? What alternative have they? Obviously their alternatives are limited: they cannot resign when they are sued, enjoined, or jailed for the community's noncompliance with the law. But as citizens they can refuse service on school boards. Since there is political capital to be gained in these areas, such refusal to serve may well be selective—exercising negative selection on the more moderate business men and administrators, and bringing forward those types who realize the political rewards to be reaped through the revival of the "Negro baiting" tactics of the recent past.

AUTHOR WYLIE H. DAVIS

Georgia is the only state which has immediately reacted to the school decisions with loud rumblings of threatened violence. Governor Talmadge and his cohorts, including some of his potential assignees

office, have pledged employment of the state militia if necessary as a last resort to keep the Negroes out of the white schools. Those who respect the law even when they are appalled with it will hope that such threats turn out to be a bluff. If armed resistance to specific court decrees, by state troops or vigilantes, should materialize, it might very well thwart the judicial process acting alone. Its occurrence could lead to a shocking denouement, since such defiance of the federal judiciary could not be ignored by President Eisenhower and his administration.

Evasion or definance of the law on a large scale would be a distressing blow to the education of whites and Negroes alike in the South, accompanied probably by a retrogression in every other phase of race relations. The general calmness that has followed the school segregation cases, albeit with plenty of argumentative discussion among the rank and file and a little political football, is an encouraging sign. The churches too may wield a powerful influence in the eventual adjustment of the problem. There are already definite indications that many Southern churchmen and law leaders do not relish being momentarily outdistanced by a secular body on the education route to human brotherhood. They may experience an increasingly strong moral and spiritual compulsion to do some catching up (emphasis supplied).

One authority regards our separate schools as the "essential nub of race relations". Any satisfactory solution to the problems of interracial relations, it is contended, must be predicated on that assumption. The readjustment required, states sociologist Howard Odum, constitutes the most crucial domestic problem in the United States in 1954.